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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

JACQUELINE MATHISEN,

Plaintiff,

v.

OREGON HEALTH AND SCIENCE
UNIVERSITY, an Oregon Public
Corporation and Governmental Entity;
WAYNE MONFIES; RUTH BEYER;
JAMES A. CARLSON; DANNY JACOBS;
CHAD PAULSON; STEVE ZIKA; STACY
CHAMBERLAIN; PRASHANT DUBEY and
DOES 1 and 2,

Defendants.

Case No.: 3:22-cv-01250-SI

FIRST AMENDED COMPLAINT FOR
DECLARATORY RELIEF AND
DAMAGES FOR RELIGIOUS
DISCRIMINATION, DISABILITY
DISCRIMINATION, RACE AND
GENDER DISCRIMINATION AND
DEPRIVATION OF CIVIL RIGHTS

(42 USC § 2000e-5 - Employment
Religious Discrimination, ORS
659A.112 – Disability Discrimination;
ORS 659A.030 – Race and Gender
Discrimination, 42 USC § 1983 –
Deprivation of Civil Rights)

JURY TRIAL REQUESTED

PRELIMINARY STATEMENT

1.

Plaintiff brings this action for declaratory relief, damages, attorney fees and

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statutory penalties pursuant to 42 USC § 2000e-5, ORS 659A.112, ORS 659A.030 and 42 USC § 1983

JURISDICTION

2.

Jurisdiction is conferred upon this court by 28 USC § 1331 because Plaintiff's action arises under the constitution and laws of the United States. Jurisdiction is also conferred upon this Court by 42 USC § 2000e-5(f) and 42 USC § 1983.

3.

This Court has authority to award the requested damages pursuant to 28 USC § 1343 and 42 USC § 2000e-5(f); the requested declaratory relief pursuant to 28 USC § 2201 and 2202 and 42 USC § 2000e-5(g); and costs and attorneys' fees pursuant to 28 USC § 1988 and 42 USC § 2000e-5(k).

4.

Venue is proper under 28 USC § 1391 as the conduct from which these claims arise occurred in the judicial district in which the Court is situated, and at least some of the defendants reside in this district. Divisional venue is proper in the Portland Division because all the events giving rise to the claims occurred in Multnomah County, Oregon.

PARTIES

5.

Plaintiff, Jacqueline Mathisen, formerly known as Jacqueline Martinez, (hereinafter "Plaintiff"), at all times material to this action, Plaintiff was a resident of Portland, Multnomah County, Oregon.

6.

Defendant Oregon Health and Science University (hereinafter "Defendant OHSU") is an Oregon Public Corporation with a principal place of business in Multnomah County, Oregon. Pursuant to ORS 353.020 Defendant OHSU is a

“governmental entity performing governmental functions and exercising governmental powers.” Defendant OHSU conducts regular, sustained business activity in Multnomah County, Oregon. Defendant OHSU employs six or more persons in the State of Oregon. At all material times Defendant OHSU was Plaintiff’s employer.

7.

Defendants Wayne Monfries, Ruth Beyer, James A. Carlson, Danny Jacobs, Chad Paulson, Steve Zika, Stacy Chamberlain and Prashant Dubey, collectively the “Board Defendants,” were members of Defendant OHSU’s Board of Directors during the fall of 2021. The Board Defendants were, at all times relevant herein, responsible for establishing Defendant OHSU’s institutional strategy and policy concerning accommodations in connection with its COVID-19 vaccination mandates including Defendant OHSU’s “Vaccine Exception Review Panel” or “Vaccine Exception Review Committee” (hereinafter “VERC”).

8.

The true names and capacities of Defendants Does 1 and 2 are unknown to Plaintiff. Each Defendant Doe is a member or agent of Defendant OHSU’s VERC who evaluated Plaintiff’s request for religious accommodation. Each Defendant designated herein as “Doe” is legally responsible for the events herein referred to and proximately caused injuries and damages to Plaintiff thereby, as herein alleged. The Does described herein were directly responsible for making decisions on Plaintiff’s religious and medical accommodation requests. Plaintiff will seek leave of this Court to amend this Complaint to show the Does’ names and capacities once they have been ascertained.

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DEMAND FOR JURY TRIAL

9.

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a Trial by Jury on all issues of her Complaint as is appropriate according to law.

GENERAL FACTUAL ALLEGATIONS

10.

On or about December 10, 2012 Plaintiff began working for Defendant OHSU and beginning in July of 2017 Plaintiff was employed as a laboratory manager in the research division. At all material times, Plaintiff performed her job duties satisfactorily.

11.

On or about August, 2021 Defendant OHSU mandated Plaintiff be fully vaccinated for Covid-19 on or before October 18, 2021 as a condition of continued employment.

12.

On or about August of 2021 Plaintiff put Defendant OHSU on notice of her sincerely held religious beliefs and medical condition which prevented her from receiving the Covid-19 vaccination.

13.

Plaintiff was singled out by managers and repeatedly confronted about compliance with Defendant OHSU's Covid-19 vaccination mandate.

14.

Defendant OHSU offered to accommodate Plaintiff's religious beliefs, but the accommodations offered were discriminatory in nature and not related to workplace safety. An unvaccinated Plaintiff did not pose a direct threat to the workplace.

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15.

In connection with its implementation of the vaccination requirement Defendant OHSU confronted Plaintiff about her use of paid time off (“PTO”).

16.

On November 22, 2021 Defendant OHSU terminated Plaintiff’s employment.

17.

Defendant OHSU required Plaintiff to turn in her equipment after her employment ended. Defendant OHSU had regularly allowed other employees, who were not Hispanic women with religious beliefs and medical conditions which prevented Covid-19 vaccination, to not comply with Defendant OHSU’s PTO policy and equipment return policy.

18.

Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) on or about February 24, 2022. Plaintiff received notice of her right to sue from the United States Department of Justice Civil Rights Division on March 10, 2022.

PLAINTIFF’S FIRST CLAIM FOR RELIEF

(42 USC § 2000e-5 - Employment Religious Discrimination)

Against Defendant OHSU

19.

Plaintiff realleges paragraphs 1 through 18 and incorporates them herein.

20.

Plaintiff has a sincerely held religious belief which prevents her from receiving a Covid-19 vaccination.

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21.

Beginning in August of 2021 Plaintiff put Defendant OHSU on notice of her sincerely held religious belief which prevented her from receiving a Covid-19 vaccination.

22.

Defendant OHSU did not make a good-faith effort to reasonably accommodate Plaintiff's religious beliefs and could have done so without incurring an undue hardship. The accommodations offered by Defendant OHSU were not reasonable because they were not related to preventing the transmission of Covid-19. An unvaccinated and unmasked Plaintiff posed no greater threat of transmission of Covid-19 than vaccinated coworkers.

23.

Defendant OHSU's method of evaluating what it called "religious exceptions" to its Covid-19 vaccination policy is discriminatory as the forms were by design meant to convince employees, like Plaintiff, that she did not have a sincerely held religious belief which prevented her from receiving a Covid-19 vaccination and to embarrass and shame Plaintiff for her beliefs.

24.

Defendant OHSU terminated Plaintiff's employment on November 22, 2021 because she was not vaccinated.

25.

Based on the foregoing, Defendant OHSU discriminated against Plaintiff in violation of 42 USC § 2000e-5. Plaintiff requests Defendant OHSU be required to pay Plaintiff her economic and non-economic damages caused by Defendant OHSU's wrongful conduct in an amount to be proven at trial.

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26.

Plaintiff requests an award of her reasonable attorney fees and expert witness fees pursuant to 42 USC §2000e-5(k).

PLAINTIFF'S SECOND CLAIM FOR RELIEF

(ORS 659A.112 – Disability Discrimination; Failure to Accommodate)

Against Defendant OHSU

27.

Plaintiff realleges paragraphs 1 through 26 and incorporates them herein.

28.

Plaintiff is a “disabled person” as defined in ORS 659A.104(1).

29.

Defendant OHSU is an “employer” as defined in ORS 659A.106.

30.

Plaintiff could perform the essential functions of her job with or without accommodation.

31.

Defendant OHSU did not engage in any interactive process with Plaintiff. Defendant OHSU could have accommodated Plaintiff's disability and continued to employ her. Plaintiff did not pose a direct threat to the workplace by remaining unvaccinated against Covid-19.

32.

As a direct result of Defendant OHSU's conduct, Plaintiff was terminated and has suffered economic damages in the form of lost wages and benefits, including back pay, front pay in lieu of reinstatement, and non-economic damages in an amount to be proven at trial.

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33.

To the extent that any amount awarded to Plaintiff is for damages occurring prior to the entry of judgment, Plaintiff is entitled to an award of pre-judgment interest at the legal rate from the date the damage occurred until the date of judgment.

34.

Pursuant to ORS Chapter 659A and ORS 20.107 Plaintiff is entitled to recover her reasonable attorney fees and costs, including expert witness fees.

PLAINTIFF'S THIRD CLAIM FOR RELIEF

(ORS 659A.030 - Race and Gender Discrimination)

Against Defendant OHSU

35.

Plaintiff realleges paragraph 1 through 34 and incorporates them herein.

36.

Defendant OHSU discriminated against Plaintiff in the terms, conditions and/or privileges of employment due to Plaintiff's race and gender.

37.

Defendant OHSU's actions through its agents and employees acting within the course and scope of their duties and with respect to applying Defendant OHSU's paid time off policy and equipment return policy to Plaintiff violated Plaintiff's rights under ORS 659A.030.

38.

As a direct and proximate result of Defendant OHSU's unlawful conduct, Plaintiff was terminated and has suffered economic damages in the form of lost wages and benefits, including back pay, front pay in lieu of reinstatement, and non-economic damages in an amount to be proven at trial.

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39.

To the extent that any amount awarded to Plaintiff is for damages occurring prior to the entry of judgment, Plaintiff is entitled to an award of pre-judgment interest at the legal rate from the date the damage occurred until the date of judgment.

40.

Pursuant to ORS Chapter 659A and ORS 20.107 Plaintiff is entitled to recover her reasonable attorney fees and costs, including expert witness fees.

PLAINTIFF'S FOURTH CLAIM FOR RELIEF

(42 USC § 1983 – Deprivation of Civil Rights)

41.

Plaintiff realleges paragraphs 1 through 40 and incorporates them herein.

42.

Under 42 USC § 1983, anyone who, under color of state law, “subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other property proceeding for redress.”

43.

Under 42 USC § 1983, state actors like the Board Defendants and Does 1 and 2 forfeit their qualified immunity from liability when, acting in their official capacities, they deliberately infringe on constitutional rights.

44.

The First Amendment of the United States Constitution prohibits government actors from infringing on an individuals freedom of religion.

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45.

Acting under color of state law the Board Defendants and Does 1 and 2 expressed overt hostility to the religious beliefs of Plaintiff by declaring Plaintiff's religious beliefs "personal moral choices and/or conscientious objection rather than a tenet of a religious faith," merely her "right to have a religious freedom or conscientiously object to the vaccine" rather than a sincerely held religious belief and "concerns over vaccine safety or content" not a sincerely held religious belief but rather a "religious argument" and "inconsistent with proven facts."

46.

Based on the foregoing, the Board Defendant's and Does 1 and 2, including the members of the OHSU's Vaccine Exception Review Committee, have deprived Plaintiff of her constitutionally protected freedom of religion.

REQUEST FOR DECLARATORY RELIEF

47.

Plaintiff realleges paragraphs 1 through 46 and incorporates them herein.

48.

The Free Exercise Clause of the U.S. Constitution's First Amendment prohibits state governments from infringing on individuals' freedom of religion.

49.

Board Defendants have violated the Free Exercise Clause by proclaiming which religious beliefs were worthy of religious exceptions and which beliefs were not. Board Defendants expressed overt hostility to religious belief in their communications about Defendant OHSU's "narrow criteria" for religious "exceptions" to Covid-19 vaccination. The Vaccine Exception Review Committee members also violated the Free Exercise Clause by asking Plaintiff to reconsider her religious objection.

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50.

Board Defendant's placed pressure on Plaintiff to conform to the prevailing approved religion by proclaiming which religious beliefs were worthy of religious exceptions and which were not.

51.

Based on the foregoing, the Court should declare that the Board Defendants' policy proclaiming which beliefs are worthy of religious exceptions and which beliefs were not violates the U.S. Constitution's Free Exercise Clause.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment against Defendants for relief as follows:

ON ALL CAUSES OF ACTION:

1. Declaratory relief;
2. Economic damages in the amount according to proof at trial;
3. Non-economic damages in the amount according to proof at trial;
4. Punitive damages in an amount according to proof at trial;
5. Plaintiff's attorney fees, expert costs, costs and disbursements incurred herein; and
6. Such other relief that the court deems just and equitable.

DATED this 27th day of February, 2023.

BAUM SMITH, LLC
Attorney for Plaintiff

By: /s/ Brent H. Smith
Brent H. Smith
OSB #065971
Trial Attorney

CERTIFICATE(S) OF SERVICE

I hereby certify that I served the foregoing FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF AND DAMAGES FOR RELIGIOUS DISCRIMINATION, DISABILITY DISCRIMINATION, RACE AND GENDER DISCRIMINATION, AND DEPRIVATION OF CIVIL RIGHTS on:

THOMAS R. JOHNSON
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by the following indicated method or methods:

- ☒ by **electronic service** upon e-filing this document with the Court through the electronic filing system
- ☐ **courtesy copy** through the courts electronic filing system as party is not registered for efile and serve at this time.
- ☐ by **emailing** a full, true, and correct copy thereof to the individuals at the e-mail address shown above, which is the last known address of the individuals above as of the date set forth below.
- ☒ by **mailing** a full, true and correct copy thereof in a sealed, first-class, and postage prepaid envelope, addressed to the attorney and parties shown above at the last-known address of the attorney and parties via the United States Postal service at La Grande, Oregon on the date set forth below.

DATED this 27th day of February, 2023.

BAUM SMITH, LLC
Attorneys for Plaintiff

By: /s/ Brent H. Smith
Brent H. Smith
OSB No. 065971
Trial Attorney